

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATIQUEKA TANAYE WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED

February 8, 2005

No. 244903

Wayne Circuit Court

LC No. 01-012732

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

PER CURIAM.

Defendant was convicted by a jury of two counts of felonious assault, MCL 750.82, and one count of possession of a firearm during the commission of a felony, MCL 750.227b. She was sentenced to concurrent prison terms of eighteen to forty-eight months each for the felonious assault convictions, and a consecutive two-year term of imprisonment for the felony-firearm conviction. She appeals as of right. We reverse and remand for a new trial.

Latonya Williams and Sarah Renner both testified at trial that defendant fired several shots at them as they drove away from defendant after the women were involved in a verbal confrontation. They both denied threatening defendant with any weapon. Conversely, defendant testified that Williams first fired a gun and also threatened defendant's children, who were walking along the street. Defendant admitted that she obtained a gun from her house and then fired it as Williams and Renner drove off. But defendant claimed that she only fired the gun into the air and did so only because she was concerned for her children's safety and wanted to scare Williams into leaving the area because Williams had threatened her children and was driving erratically in the direction where the children were walking. The trial court denied defendant's requests for jury instructions on self-defense and defense of others, because it found that "[n]o self defense [*sic*] claim has been legitimately raised in this trial." Later, defense counsel again objected on the record to the trial court's failure to give an instruction on either self-defense or defense of others.

Defendant argues there was insufficient evidence to support her conviction. We agree with defendant that she may challenge the sufficiency of the evidence in support of her convictions even though she did not move for a directed verdict at trial, *People v Wolfe*, 440 Mich 508, 516 n 6; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). An appellate court's review of the sufficiency of the evidence to sustain a conviction should not turn on whether there was any evidence to support the conviction, but whether there was sufficient

evidence to justify a rational trier of fact in finding the defendant guilty beyond a reasonable doubt. *Id.* at 513. The evidence must be reviewed in a light most favorable to the prosecution. *Id.* at 514-515. The elements of felonious assault are “(1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery.” *People v John Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). Felony-firearm requires that the defendant possess a firearm during the commission or attempt to commit a felony. *Id.*

We conclude, however, that defendant is entitled to a new trial because of instructional error. Claims involving instructional error are reviewed de novo. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002).

Jury instructions are to be read as a whole rather than extracted piecemeal to establish error. . . . Even if somewhat imperfect, instructions do not warrant reversal if they fairly presented the issues to be tried and sufficiently protected the defendant’s rights. . . . The instructions must include all elements of the crime charged and must not exclude consideration of material issues, defenses, and theories for which there is supporting evidence. . . . No error results from the absence of an instruction as long as the instructions as a whole cover the substance of the missing instruction. [*Id.* (citations omitted).]

A trial court is required to give a defendant’s requested instruction when it concerns his theory of the case and is supported by the evidence. *People v Rodriguez*, 463 Mich 466, 472-473; 620 NW2d 13 (2000). When a requested instruction is not given, the defendant has the burden of establishing that the trial court’s error resulted a miscarriage of justice or was outcome determinative. *Id.* at 473-474; MCL 769.26.

The evidence presented at trial did not support defendant’s requested instruction on self-defense. Our review of the evidence indicates that defendant obtained a gun only after retreating to the safety of her house. Because defendant had retreated to a place of safety, an instruction on self-defense was not supported by the evidence.

But the trial court erred in denying the requested instruction on defense of others. An instruction on defense of others is proper when there is evidence that the defendant honestly and reasonably believed that another person was in danger of being killed or seriously hurt, and the defendant honestly and reasonably believed that her conduct was immediately necessary to protect the other person. CJI2d 7.21. Defendant testified that Williams was armed with a gun and fired it, and that Williams also threatened defendant’s children, who were walking along the street on their way home. Defendant claimed that she obtained a gun from her own home and fired it into the air because she was concerned for her children’s safety and wanted to scare Williams, who was driving erratically in the direction of her children, into leaving the area. Defendant’s testimony, if believed, supported an instruction on defense of others.

The trial court’s failure to give the requested instruction deprived defendant of her right to have the jury instructed on the principal defense at trial. *Kurr, supra* at 328. Because the instruction was clearly supported by defendant’s testimony and was central to the defense theory, defendant has demonstrated that the trial court’s error was outcome-determinative and, therefore,

not harmless. *Rodriguez, supra*. Accordingly, we reverse defendant's convictions and remand for a new trial.

Reversed and remanded. We do not retain jurisdiction.

/s/ Mark J. Cavanagh  
/s/ Stephen L. Borrello

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HOEKSTRA, P.J., (*dissenting*).

I respectfully dissent. I concur and join with the majority on the issues of the sufficiency of the evidence and the denial of an instruction on self-defense, but unlike the majority, I conclude that the failure to give a defense of others instruction was, at most, harmless error.

To support the giving of an instruction for the defense of others, the evidence must support a finding that defendant honestly and reasonably believed that her children were in danger of being killed or seriously hurt, and honestly and reasonably believed that the use of deadly force was immediately necessary for their protection. *People v Helfin*, 434 Mich 482, 502; 456 NW2d 10 (1990); CJI 2d 7.21. For a claim of defense of others, the third party steps into the shoes of the individual threatened. *Id.* at 511-512 n 26. Further, a claim of defense of others requires that the defendant acted in response to an assault. *City of Detroit v Smith*, 235 Mich App 235, 238; 597 NW2d 247 (1999).

Here, the only evidence that remotely supported giving a defense of others instruction was defendant's testimony on direct examination that she shot her gun into the air as the victim drove off in a reckless manner in the direction of her children. However, on cross-examination defendant repudiated that testimony and instead maintained that the victim's car was still in her driveway when she fired and that the car drove off after she fired the shot. Under these circumstances, even if it was error not to instruct on defense of others, the error was not outcome determinative and therefore was harmless. *People v Rodriguez*, 463 Mich 466, 473-474; 620 NW2d 13 (2000). (When the failure to give a requested instruction is error, it amounts to nonconstitutional preserved error that is harmless unless a defendant persuades the reviewing court that it is more probable than not that the error was outcome determinative.)

I would affirm.

/s/ Joel P. Hoekstra